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Dec. 20. 1881

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 183.

JAMES POTT, EDWIN YOUNG, AND JAMES B. YOUNG, PLAINTIFFS IN ERROR,

vs.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 23, 1879.

13

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between James Pott, Edwin Young, and James B. Young, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the seventh day of December, in the year of our Lord one thousand eight hundred and seventy-eight.

]SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the U. S.
for the Southern Dist. of New York.

Allowed.

WM. G. CHOATE,
Dist. Judge.

2 (Indorsed:) A 205. Supreme Court of the United States. James Pott & al., p'fs in error, vs. Chester A. Arthur, def't in error. Writ of error.

Service of a copy of the within is hereby admitted this 9th day of December, 1878.

STEWART L. WOODFORD,
U. S. Att'y for Def't.

Hartley & Coleman, att'ys for p'fs in error, 51 William st., New York City. U. S. circuit court. Filed Dec. 13, 1878. John I. Davenport, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from four to forty, inclusive, contains a true and complete transcript of the record
3 and proceedings had in said court in the cause of James Pott, Edwin Young, and James B. Young, plaintiffs in error, against

Chester A. Arthur, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 19th day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

4 *Summons for a money demand on contract.*

Supreme court, State of New York, New York County.

JAMES POTT, EDWIN YOUNG, AND JAMES B. Young, plaintiffs,
against
CHESTER A. ARTHUR, COLLECTOR, DEFENDant. } Com. not ser.

To the defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the county of New York, at the city hall, New York City, and to serve a copy of your answer to the said complaint, on the subscriber' at their office, No. 113 Broadway, New York City, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of one hundred and sixty-seven $\frac{52}{100}$ dollars with interest from the twenty-
5 fifth day of August, one thousand eight hundred and seventy-four, besides the costs and disbursements of this action.

Dated December 24, 1874.

OGDEN & VAN WYCK,
Plaintiffs' Attorney'.

(Endorsed:) Supreme court, N. Y. County. James Pott et al. vs. C. A. Arthur. Summons. Received Jan. 5, 1875. U. S. attorney's office. Rec'd Dec. 24, '74. Ogden & Van Wyck, pl'ffs' attorneys, 113 Broadway.

6 The President of the United States of America to the judges of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second
[L. S.] circuit, shall be certified of a certain cause commenced before you, against Chester A. Arthur, defendant, by James Pott & al., plaintiffs, do therefore command you that the record and proceedings in the said cause, you distinctly and openly send to the said circuit court, at the city of New York, on the 26th day of April, 1875, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon, what of right ought to be done.

7 Witness Morrison R. Waite, esquire, Chief-Justice of the Su-

preme Court of the United States, the 19th day of April, in the year one thousand eight hundred and seventy-five.

KENNETH G. WHITE,
Clerk.

GEORGE BLISS,
Defendant's Attorney.

(Endorsed:) U. S. circuit court. Chester A. Arthur ads. Pott. Copy certiorari. George Bliss, defendant's attorney.

SIR: Take notice that the within is a copy of a certiorari, this day issued out of the circuit court of the United States for the southern district of New York.

New York, Ap'l 19, 1875.

Yours, &c.,

GEORGE BLISS,
Defendant's Attorney.

Due service of a copy of the within and of the above notice is hereby admitted.

New York, Ap'l 19, 1875.

OGDEN & VAN WYCK,
Plaintiffs' Attorney', 113 Broadway.

8 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of April, 1875, to wit, of the 28th day of September, in the year of our Lord one thousand eight hundred and seventy-five.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 28th day of September, 1875, in April term of the year 1875, before the judges of the circuit court of the United States of America for the southern
9 district of New York, in the second circuit, at the United States court buildings in the city of New York, came James Pott, Edwin Young, & James B. Young, by Ogden & Van Wyck, their attorney', and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon promises, which said declaration follows in these words, that is to say:

10 THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York.

JAMES POTT, EDWIN YOUNG, AND JAMES B. Young, plaintiffs,
against
CHESTER A. ARTHUR, DEFENDANT.

In the second circuit, as yet of the April term, in the year one thousand eight hundred and seventy-five, James Pott, Edwin Young, and James B. Young, the plaintiffs in this suit, come into court and, by Ogden & Van Wyck, their attorneys, give the court now here to be informed that heretofore, to wit, on the twenty-fourth day of December last past, this action was commenced in the supreme court of the city and county of New York, according to the laws of the State of New York and the rules and practice of said court, in favor of the said plaintiffs against the defendant herein, upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of
11 said court; that the defendant afterwards, by his attorney, George Bliss, esquire, duly appeared in said action, and thereupon, on the nineteenth day of April, in the year one thousand eight hundred and seventy-five, the said action was duly removed, by writ of certiorari, for further prosecution into this court, according to the act of Congress in such case made and provided; and the clerk of the said supreme court did thereupon return the said writ, with the said summons, and duly file the same in this court; which allegations the defendant admits to be true.

Wherefore let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, who were at the time hereinafter mentioned copartners, doing business as such under style of Pott, Young & Co., by their said attorneys, complain of said defendant of a plea of trespass on the case for promises, for that whereas said defendant,
12 on 25th day of August, eighteen hundred and seventy four, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of one hundred and sixty-seven and $\frac{52}{100}$ dollars, lawful money of the United States of America, for duties on merchandise, to wit, certain printed books and printed matter imported into, and entered at the collection district of the United States for the city of New York, on or about the month of August, in the year one thousand eight hundred and seventy-four, in the following vessels, to wit, Italia, Britannic, and Oceanic, from Great Britain, unlawfully demanded, exacted, and received at said New York City by the said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal, in writing, in due form of law.

And being so indebted he, the said defendant, in consideration
13 thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas also, the said defendant afterwards, to wit, on the same

day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of one thousand dollars lawful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant; and for
14 other money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, & at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he should be thereunto afterwards requested.

Nevertheless said defendant (although often afterwards requested so to do) has not paid said sums of money or any or either of them, or any part thereof to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs has hitherto refused, and still does refuse, to the damage of the said plaintiffs of one thousand dollars, and therefore the said plaintiffs bring suit, &c.

OGDEN & VAN WYCK,
Attorneys for the Plaintiffs, 115 *Broadway*.

15 (Endorsed:) U. S. circuit court. James Pott et al. vs. Chester A. Arthur. Declaration. Ogden & Van Wyck, attorneys for plaintiffs, 115 Broadway. To George Bliss, esq., def't's att'y. Sept. 27, '75.

16 *Bill of particulars.*

Supreme court, New York, No. 1, county of New York.

JAMES POTT ET AL.
versus
CHESTER A. ARTHUR.

Names of importers: James Pott, Edwin Young, and James B. Young, copartners in business under the name and style of Pott, Young & Co.

Description of merchandise: printed books.

Place whence imported and name of vessel: Edinburgh, per st'm'r Italia; London, Eng., per st'm'r Britannic; London, Eng., per st'm'r Oceanic.

Date of invoice: per Italia, July 20, 1874; per Britannic, July 28, 1874; per Oceanic, August 11, 1874.

Date of entry: per Italia, August 3, 1874; per Britannic, August 12, 1874; per Oceanic, August 24, 1874.

Precise amount of duty claimed to have been exacted in excess:

17	On importation per Italia	$42 35
	On importation per Britannic	60 67
	On importation per Oceanic	64 50
		$167 52

Date of payment duty: per Italia, August 6, 1874; Britannic, August 12, 1874; Oceanic, August 25, 1874.

Day and year on which protest was filed and appeal made: per Italia, August 10, 1874; per Britannic, August 12, 1874; per Oceanic, August 24, 1874.

Date of decision of Secretary of the Treasury: per Italia, Sept. 25, 1874; per Britannic, Sept. 25, 1874; per Oceanic, Sept. 25, 1874.

To GEORGE BLISS,
Attorney for the Def't.

Please take notice that the foregoing is a bill of particulars in this action which is brought, to recover excess of duties erroneously and illegally exacted under the revenue laws of the United States, at
18 the rate of twenty-five per centum ad valorem; whereas the proper and legal rate of duty on said importation was twenty-five per centum, less ten per centum.

February, 9, 1875.

OGDEN & VAN WYCK.

(Endorsed:) Supreme court. James Pott et al. vs. Chester A. Arthur. Bill of particulars. To Geo. Bliss, att'y for def't, 41 Chambers . Feb. 9, '75. Ogden & Van Wyck, pl'ffs att'ys, 113 Broadway.

19 *Plea.*

United States circuit court; southern district of New York.

CHESTER A. ARTHUR } *ad's.*
JAMES POTT ET AL. }

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country. And the said plaintiffs do the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To OGDEN & VAN WYCK, Esq.,
Plaintiffs' Attorney.

20 (Endorsed:) U. S. circuit court. C. A. Arthur ads. J. Pott & al. Plea. Geo. Bliss, attorney for defendant.

Due service of a copy of within is hereby admitted. New York, 28, 1875.

OGDEN & VAN WYCK.

You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court, for the southern district of New York.

New York, Sept. 28, 1875.
Yours, &c.,

GEO. BLISS,
Defendant's Attorney.

To OGDEN & VAN WYCK, Esq.,
Plaintiffs' Attorney.

21 FRIDAY, *November* 24, 1876.

The court meets pursuant to adjournment, and is opened by proclamation.

Present, Judge Shipman.

JAMES POTT
vs.
CHESTER A. ARTHUR.

On motion of Philip V. R. Van Wyck, esq'r, of counsel for the plaintiff in the above-entitled cause, ordered trial.

Counsel for the respective parties to said cause file a written consent to waive trial by jury, as on file amended by order of court, and to submit the cause to be passed upon by the court without a jury on an agreed statement of facts, as on file amended by order of court, and argument thereon.

Mr. Van Wyck is heard in favor of the plaintiff.

United States District Attorney Bliss, counsel for the defendant, is heard in favor of said defendant.

Mr. Van Wyck is heard in reply.

22 Ordered, that judgment be, and the same is hereby, entered for the defendant in the above-entitled cause.

23 *Judgment.*

United States circuit court, southern district of New York.

JAMES POTT & AL.
vs.
C. A. ARTHUR. } 4058.

The issues in this action having been brought on for trial before Mr. Judge Shipman, at a circuit court of the October term 1876, and the issues having been tried, and a judgment for the defendant having been duly entered by order of the court on the twenty-fourth day of November, 1876, and his costs having been adjusted at $ twenty-four $\frac{57}{100}$, ($24.57.)

Now, on motion of Stewart L. Woodford, United States attorney, for defendant—

It is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $24.57, his taxed costs, and have execution therefor.

Judgment signed this 22nd day of Jan'y, 1878.

J. M. DEUEL,
Dep. Clerk.

24 (Endorsed:) 4058. United States circuit court. James Pott et al. vs. Chester A. Arthur. Judgment roll. Stewart L. Woodford, United States attorney, for defendant. Costs, $24.57. U. S. circuit court. Filed Jan. 22, 1878. John I. Davenport, clerk.

25 U. S. circuit court, southern district of New York.

JAMES POTT ET AL.
vs.
CHESTER A. ARTHUR. } 4058.

The motion in this action to amend the judgment-roll herein, which

was filed January 21st, 1878, having come on for argument, and on reading and filing the affidavit of P. V. R. Van Wyck in support of said motion, and the affidavit of J. Dana Jones, ass't U. S. dist. att'y, in opposition thereto, and J. Dana Jones, assist. U. S. dist. att'y having been heard in opposition to the motion, and Hartley & Coleman in support of the motion, and mature consideration thereof having been had it is hereby ordered that the said judgment-roll be, and the same is hereby, amended as follows, viz, by inserting in the last page but one of the said judgment-roll after the words "waive trial by jury" the words "as on file," and after the words "agreed statement of facts" on said
26 page the words "as on file." And it is further ordered that the following waiver of jury trial and agreed statement of facts be filed nunc pro tunc as of the date of the trial as being the stipulation and waiver of jury trial upon which the cause was submitted, viz:

The circuit court of the United States of America for the southern district of New York, in the second circuit.

JAMES POTT ET AL.
against
CHESTER A. ARTHUR.

It is hereby stipulated and agreed that the following facts are and shall be admitted by both parties for the purposes of and on the trial of this action:

I. That during the month of August, 1874, the plaintiffs imported into the port of New York, from Great Britain, per steamers Italia, Britannic & Oceanic, three several importations of printed books, which consisted of Bibles, religious, prayer, and other books, the leaves of which were printed paper, bound in the ordinary manner, but
27 in various styles.

II. That the defendant was the U. S. collector of customs of said port at the time of said importations, and as such exacted from said plaintiffs, and said plaintiffs paid to the said defendant, as collector aforesaid, customs duty on said books, printed and bound as aforesaid, at the rate of twenty-five per centum ad valorem, without any abatement.

III. That the said plaintiffs duly protested against the payment of said duty at said rate, and claimed that said books should be admitted to entry and pay customs duty at the rate of twenty-five per centum, less ten per centum, ad valorem, under section 2503 of the United States Revised Statues.

IV. That said plaintiffs duly protested, and appealed, and did and performed on their part all and every act and condition required by law to the maintenance of this action.

V. That the difference between the amount of duty exacted and paid as aforesaid on said printed books, at the rate of twenty-five per
28 cent. ad valorem, and the amount of duty estimated thereon at ninety per centum of twenty-five per centum ad valorem, amounts in the aggregate to the sum of one hundred and sixty-seven $\frac{52}{100}$ dollars.

VI. That no part of said duty has been repaid or refunded to the said plaintiffs.

VII. That the statements in the plaintiffs' bill of particulars are true.

It is further stipulated and agreed by both parties to waive a trial

by jury, and to submit the case to the court on the foregoing statement of facts, with arguments and briefs, to hear and determine.

OGDEN & VAN WYCK,
Att'ys for Plaintiffs.
GEORGE BLISS,
U. S. Att'y, for Defendant.
N. SHIPMAN, *Judge.*

The form of this order is hereby approved.

STEWART L. WOODFORD,
U. S. Att'y, for Def't.

(Endorsed:) U. S. circuit court, southern dist. New York.
29 James Pott & al. vs. Chester A. Arthur. Order amending judgment-roll. Hartley & Coleman, for p'fs, att'ys, 51 William st., New York City. U. S. circuit court. Filed Dec. 3, 1878. John I. Davenport, clerk.

30 U. S. circuit court, southern district of New York.

JAMES POTT & AL.
v.
CHESTER A. ARTHUR.

And now come the above plaintiffs by their attorneys, Hartley & Coleman, and show the court that the amount of the judgment herein in favor of the said defendant as appears by the judgment-roll is twenty-four dollars and fifty-seven cents; that the plaintiffs propose to sue out a writ of error herein to remove the cause to the U. S. Supreme Court, where according to the rules of said court security must be given by them for the costs of said court, and where in the regular order of business it will be heard and determined in less than three years: Wherefore they propose to pay into the registry of this court the sum of thirty-five dollars as sufficient security to the defendant that they
31 will prosecute their said writ of error to effect, and will pay all damages and costs if they fail to reverse the judgment aforesaid, said sum of thirty-five dollars to be hereafter paid out upon the order of the court as it may be found due. Now therefore, it is ordered that such payment into the registry of this court shall be good and sufficient security upon said writ of error and the citation thereunder.

December 7, 1878.

W. G. CHOATE, *Judge.*

(Endorsed:) U. S. circuit court, southern district of New York. James Pott & al. vs. Chester A. Arthur. Order fixing security on citation & writ of error. U. S. circuit court. Filed Dec. 13, 1878. John I. Davenport, clerk.

32 U. S. circuit court, southern district of New York.

JAMES POTT & ALS.
vs.
CHESTER A. ARTHUR.

Received into the registry of this court, from the plaintiffs in this action, thirty-five dollars, in accordance with the order of this court herein, dated Dec. 7, 1878.

JOHN I. DAVENPORT, *Clerk.*

(Endorsed:) Filed Dec. 7, 1878.

33 U. S. circuit court, southern district of New York.

JAMES POTT & AL.
vs.
CHESTER A. ARTHUR.

A motion having been made in this action by Stewart L. Woodford, U. S. att'y, for def't, that the citation and writ of error signed and allowed on the 7' day of December, 1878, be vacated, or compelling the plaintiffs herein to file a bond for costs; now on hearing J. Dana Jones, esq., ass't U. S. att'y for the motion, and Hartley & Coleman in opposition thereto, it is ordered that the said motion be denied.

December 12th, 1878.

W. G. CHOATE, *Judge.*

Form of order assented to.
N. Y, Dec. 12, 1878.

STEWART L. WOODFORD,
U. S. Att'y.

34 (Endorsed:) U. S. circuit court, southern dist. N. Y. James Pott, & al. vs. Chester A. Arthur. Order. Hartley & Coleman, pl'ffs' atty's, 51 William st., New York City. U. S. circuit court. Filed Dec., 1878, John I. Davenport, clerk.

35 Supreme court of the United States. Of October term, 1879.

JAMES POTT, EDWIN YOUNG, AND JAMES B. Young, plaintiffs in error,
vs.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the said court, at the Capitol n Washington, come the said plaintiffs in error, by Hartley & Coleman, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error, Chester A. Arthur, against the said
36 plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendant; and the said plaintiffs pray that the judgment aforesafd, for the error aforesaid, may be reversed, annulled, and altogether held for nothing, and that the said plaintiffs may be restored to all things which they have lost by occasion of said judgment, &c.

HARTLEY & COLEMAN,
Attorneys for Plaintiffs in Error.

(Endorsed:) U. S. Supreme Court. James Pott & al. pl'ffs in error vs. Chester A. Arthur, def't in error. Assignment of error. Due service of a copy hereof is hereby admitted this 12th day of December, 1878. S. L. Woodford, U. S. att'y, for def't in error..

Hartley & Coleman, att'y, for pl'ffs. Error. 51 William st., N. Y. City. U. S. circuit court. Filed Dec. 15th, 1878. John I. Davenport, clerk.

37 Supreme Court of the United States.

JAMES POTT, EDWIN YOUNG, JAMES B. Young, plaintiffs in error, *vs.* CHESTER A. ARTHUR, DEFENDANT IN ERROR. } In error, October term, 1879.

And afterwards, to wit, on the second Monday of October, in the same term, the said Chester A. Arthur, defendant in error, by Stewart L. Woodford his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid. And he prays the said Supreme Court may proceed to examine before the justices thereof now here, as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

38 STEWART L. WOODFORD,
Attorney for Defendant in Error.

(Endorsed:) U. S. Supreme Court. James Pott & al. pl'ffs in error, vs. Chester A. Arthur, def't in error. Joinder in error. Due service of a copy hereof is hereby admitted this 12th day of December, 1878. Hartley & Coleman, att'ys for pl'ffs in error. U. S. circuit court. Filed Dec. 13, 1878. John I. Davenport, clerk.

39 The United States of America greeting, to Chester A. Arthur:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein James Pott, Edwin Young, and James B. Young are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not done to the parties in that behalf.

Witness the honorable William G. Choate, one of the judges of the circuit court of the United States for the southern district of New York, this seventh day of December, in the year of our Lord one thousand eight hundred and seventy-eight.

WM. G. CHOATE.

Service of a copy of the above is hereby admitted this 9th day of December, 1878.

STEWART L. WOODFORD,
U. S. Att'y for Def't Arthur.

40 (Indorsed:) A 205. U. S. circuit court, southern dist. of New York. James Pott & al. vs. Chester A. Arthur. Citation. Hartley & Coleman, p'fs att'ys. 51 William st., New York City. U. S. circuit court. Filed Dec. 13, 1878. John I. Davenport, clerk.

(Indorsement on cover:) No. 183. James Pott, Edwin Young, & James B. Young, plaintiffs in error, vs. Chester A. Arthur, collector of the port of New York. S. New York. C. C. U. S. Filed 23rd April, 1879.

33 U. S. circuit court, southern district of New York.

JAMES POTT & AL.
vs.
CHESTER A. ARTHUR.

A motion having been made in this action by Stewart L. Woodford, U. S. att'y, for def't, that the citation and writ of error signed and allowed on the 7' day of December, 1878, be vacated, or compelling the plaintiffs herein to file a bond for costs; now on hearing J. Dana Jones, esq., ass't U. S. att'y for the motion, and Hartley & Coleman in opposition thereto, it is ordered that the said motion be denied.

December 12th, 1878.

W. G. CHOATE, *Judge.*

Form of order assented to.
N. Y, Dec. 12, 1878.

STEWART L. WOODFORD,
U. S. Att'y.

34 (Endorsed:) U. S. circuit court, southern dist. N. Y. James Pott, & al. vs. Chester A. Arthur. Order. Hartley & Coleman, pl'ffs' atty's, 51 William st., New York City. U. S. circuit court. Filed Dec., 1878, John I. Davenport, clerk.

35 Supreme court of the United States. Of October term, 1879.

JAMES POTT, EDWIN YOUNG, AND JAMES B. Young, plaintiffs in error,
vs.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the said court, at the Capitol in Washington, come the said plaintiffs in error, by Hartley & Coleman, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error, Chester A. Arthur, against the said
36 plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendant; and the said plaintiffs pray that the judgment aforesafd, for the error aforesaid, may be reversed, annulled, and altogether held for nothing, and that the said plaintiffs may be restored to all things which they have lost by occasion of said judgment, &c.

HARTLEY & COLEMAN,
Attorneys for Plaintiffs in Error.

(Endorsed:) U. S. Supreme Court. James Pott & al. pl'f's in error vs. Chester A. Arthur, def't in error. Assignment of error. Due service of a copy hereof is hereby admitted this 12th day of December, 1878. S. L. Woodford, U. S. att'y, for def't in error..

Hartley & Coleman, att'y, for pl'ffs. Error. 51 William st., N. Y. City. U. S. circuit court. Filed Dec. 15th, 1878. John I. Davenport, clerk.

37 Supreme Court of the United States.

JAMES POTT, EDWIN YOUNG, JAMES B. Young, plaintiffs in error, *vs.* CHESTER A. ARTHUR, DEFENDANT IN ERROR. } In error, October term, 1879.

And afterwards, to wit, on the second Monday of October, in the same term, the said Chester A. Arthur, defendant in error, by Stewart L. Woodford his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid. And he prays the said Supreme Court may proceed to examine before the justices thereof now here, as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

38 STEWART L. WOODFORD,
Attorney for Defendant in Error.

(Endorsed:) U. S. Supreme Court. James Pott & al. pl'ffs in error, vs. Chester A. Arthur, def't in error. Joinder in error. Due service of a copy hereof is hereby admitted this 12th day of December, 1878. Hartley & Coleman, att'ys for pl'ffs in error. U. S. circuit court. Filed Dec. 13, 1878. John I. Davenport, clerk.

39 The United States of America greeting, to Chester A. Arthur:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein James Pott, Edwin Young, and James B. Young are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not done to the parties in that behalf.

Witness the honorable William G. Choate, one of the judges of the circuit court of the United States for the southern district of New York, this seventh day of December, in the year of our Lord one thousand eight hundred and seventy-eight.

WM. G. CHOATE.

Service of a copy of the above is hereby admitted this 9th day of December, 1878.

STEWART L. WOODFORD,
U. S. Att'y for Def't Arthur.

40 (Indorsed:) A 205. U. S. circuit court, southern dist. of New York. James Pott & al. vs. Chester A. Arthur. Citation. Hartley & Coleman, p'fs att'ys. 51 William st., New York City. U. S. circuit court. Filed Dec. 13, 1878. John I. Davenport, clerk.

(Indorsement on cover:) No. 183. James Pott, Edwin Young, & James B. Young, plaintiffs in error, vs. Chester A. Arthur, collector of the port of New York. S. New York. C. C. U. S. Filed 23rd April, 1879.

SUPREME COURT U.S.
FILED
DEC 1 1881
JAMES H. McKENNEY, Clerk.

P. F. McBREEN, Steam Law and Job Printer, 16 Beekman St., N. Y.

U. S. Supreme Court.

JAMES POTT *et als.*,
Plaintiffs in error,
vs.
CHESTER A. ARTHUR.

October Term, 1881.
No. 183.

Statement.

In August, 1874, plaintiffs imported at New York, bibles, religious, prayer and other books, variously bound, the leaves of which were printed paper.

Defendant, as Collector of the Port, exacted duty at 25 per cent., and plaintiffs duly protested, appealed and brought suit, claiming that books should only pay 90 per cent. of that rate.

Record, page 8, folios 26, 27, 28.

Section 2,504, Schedule M (Rev. Stats., p. 474), imposes duty at 25 per cent. on "books."

Section 2,503 (p. 459) provides that only 90 per cent. of the duties levied by Section 2,504 shall be paid "on "all paper and manufactures of paper, excepting unsized "printing paper, books and other printed matter, and "excepting sized or glued paper suitable only for print-"ing paper."

The question is whether this paragraph grants a reduction of duty on books and printed matter, or excepts them from it.

The use of a parenthesis (omitted in the law) presents the different readings plainly.

We read:

"On all paper and manufactures of paper (except un-
"sized printing paper), books and other printed matter,
"and excepting sized or glued paper suitable only for
"printing paper."

Defendant reads:

"On all paper and manufactures of paper (except
"unsized printing paper, books and other printed mat-
"ter), and excepting sized or glued paper suitable only
"for printing paper."

On the agreed facts, judgment was given for defendant, and the case comes here for error.

By the Act of March 3, 1875, Sec. 4 (18 Stats., 349), all the 10 per cent. reductions were repealed, and this contention covers the short time between August, 1874, and March, 1875.

Assignment of Error.

The judgment for defendant and against plaintiff.

BRIEF.

I.

"Books and printed matter" are not exceptions from, because not within, "paper and manufactures of paper."

An exception is always of a *part* of the thing granted, or *out of* the general words and description in the grant.

1 Kent Com's, 463. Bouvier Law Dict., vol. 2, page 391.

And is strictly construed.

U. S. v. Dickson, 15 Peters, 165.

Books and printed matter have in Tariff Acts been carefully distinguished from paper and its manufactures; books have always been exclusively enumerated for duty as "books," and the Revised Statutes, Section 2504, Schedule M, emphasizes the distinction by dividing them into distinct classes. "Books" on page 474 and "paper" on page 479.

BOOKS.	PAPER.
ACT JULY 30, 1846 9 STATUTES.	
SCHEDULE G., PAGE 48. 10 PER CENT.	SCHEDULE C., PAGES 45, 46. 30 PER CENT.
Books, printed, magazines, pamphlets, periodicals and illustrated papers, bound or unbound, not otherwise provided for. * * * Engravings or plates, bound or unbound. * *	Manufactures of paper, or of which paper is a component material, not otherwise provided for. Paper antiquarian, etc., and all other paper, not otherwise provided for. * * Paper boxes and envelopes.
ACT MARCH 2, 1861. 12 STATUTES.	
SEC. 18, PAGE 187. 15 PER CENT.	SEC. 22, PAGE 192. 30 PER CENT.
All books, periodicals and pamphlets, and all printed matter and illustrated books and papers.	Manufactures of paper, or of which paper is a component material, not otherwise provided for. * Paper boxes * envelopes * hangings, paper antiquarian, etc., and all other paper not otherwise provided for.
ACT JULY 14, 1862. 12 STATUTES.	
PAGE 551, SEC. 8. 20 PER CENT.	PAGE 557. 5 PER CENT. ADDITIONAL.
Books, periodicals, pamphlets, blank books, bound or unbound, and all printed matter, engravings, bound or unbound, illustrated books and papers and maps and charts.	Repeats above enumerations.

Act of March 3, 1863, Sec. 5. 12 Statutes, 742.

No mention.

Printing paper, unsized, used for books and newspapers exclusively.

Act June 30, 1864, Sec. 13. 13 Statutes.

Page 213. 25 per cent.

Books, periodicals, pamphlets, blank books, bound or unbound, and all printed matter, engravings, bound or unbound, illustrated books and papers and maps and charts.

Act June 6, 1872. 17 Statutes.

Page 234, sec. 5. free.

Books * printed and manufactured more than 20 years. * Books, maps and charts imported by authority or for use of the United States. *

Books, maps and charts specially imported. *

Books, professional, of persons arriving in the United States. Books and libraries, or parts of libraries, in the use of persons or families from foreign countries, etc.

Page 233, sec. 4. 25 per cent.

On all sized or glued paper suitable only for printing paper.

Revised Statutes, Edition of 1878.

Schedule M., page 474.

Books, periodicals, blank books, bound or unbound, and all printed matter, engravings, bound or unbound, illustrated books and papers and maps and charts, 25 per cent.

Schedule M., page 479. title, "paper."

Sized or glued, suitable for printing paper, 25 per cent.; printing, unsized, for books and newspapers exclusively, 20 per cent.; manufactures of, or of which paper is a component material, not otherwise provided for, 35 per cent.; sheathing paper, 10 per cent.; paper boxes * 35 per cent.; envelopes, 35 per cent.; hangings and paper for screens or fireboards, paper antiquarian, etc., and all other paper not otherwise provided for, 35 per cent.

The Revised Statutes were enacted in view of legal decisions on the earlier law, and the marginal index of cases at Section 2503 shows the following:

"It has long been a settled rule of construction of rev-
"enue laws imposing duties on articles of a specific de-
"nomination to construe the articles according to the
"designation of such articles, as understood and known
"in commerce and not with reference to the materials
"of which they might be made or the use to which they
"might be applied."

Curtis v. Martin, 3 How., 109.

"When Congress in legislating on the subject of duties
"has described an article so as to identify it by a given
"designation for revenue purposes and this has been so
"long continued as to impress on it a particular desig-
"nation as an article of import, then it must be treated
"as a distinct article, whether there be evidence that it
"is so known in commerce or not."

De Forest v. Lawrence, 13 How., 282.

"It is not to be presumed that Congress, when it sub-
"stitutes the provisions of one Tariff Act for those of
"another, intends to use terms in a sense different from
"that in which they were used in the prior Act."

Roosevelt v. Maxwell, 3 Blatch., 391.

See also

Reiche v. Smythe, 13 Wallace, 162.
Homer v. The Collector, 1 Wallace, 486.
Arthur v. Lahey, 96 U. S., 113, 118.
Movius v. Arthur, 95 U. S., 144.

"Printed matter" is not a "manufacture of paper."

Arthur v. Moller, 97 U. S., 368, 369.

"Books and printed matter," then, are not in a Tariff sense "paper and manufactures of paper," so as to be excepted from them; therefore, they must have been enumerated for reduction of duty.

II.

"Books" in fact are no more manufactures of paper, than paintings on canvas manufactures of linen (Arthur v. Moller, 97 U. S., 367), or artificial flowers, manufactures of cotton (Arthur v. Rheims, 96 U. S., 143); and if material controls, most bound books would be manufactures of leather chief value, upon which the reduction is granted by the Section.

But a book is a bound volume containing a literary composition, without reference to the material of which the leaves or binding are made.

III.

The phraseology shows that the first exception does not include books and printed matter.

The word "excepting" is *twice* used, which shows that something between its first and second use is not excepted, *i.e.*, "books and printed matter." Otherwise no effect can be given to the words "*and excepting*" occurring after the words "books and other printed matter," for one exception would have been sufficient.

But both exceptions are necessary. "Unsized printing paper" being an exception from "paper and manufactures of paper" properly follows those words "and

books and other printed matter," a new subject for reduction coming next, the second exception was required.

The words "books and other printed matter" not being embraced in "paper and manufactures of paper," would be unnecessarily used if it were not intended to grant a reduction of duty upon those articles.

Statutes must be so interpreted as to give effect to all their words.

U. S. v. Bassett, 3 Story, 389.

If defendant's position be correct, the Statute as revised would have read in one of two ways; either, "all "paper and manufactures of paper, excepting unsized "printing paper, books and other printed matter and "sized or glued paper suitable only for printing paper," or "all paper and manufactures of paper, excepting "unsized printing paper and sized or glued paper suita-"ble only for printing paper," and if defendant prevails here, the Court must do to this Statute what the Revisers have not done.

IV.

The original law read "on all paper and manufactures of "paper, excepting unsized printing paper, books and other printed matter, not herein specifically provided for." Act June 6, 1872, Sec. 2, 17 Stats., 232.

The concluding words "not herein specifically provided for" are not part of the *exception*, because the intent is that articles which are elsewhere specifically provided for in the Act shall receive no reduction of duty under this Section.

But the exception under the punctuation may or may not include "books and other printed matter."

Aside from considerations already advanced and regardless of punctuation, "which is a most fallible standard by which to interpret a writing," Ewing v. Barnet, 11 Pet., 41, 54. a comparison of this sentence with all similar ones in the Act will remove the doubt.

In three places the draftsman has constructed sentences like this. containing words equivalent to "not herein specifically provided for," and those words invariably follow the subjects to which they refer, without any break of connection.

Thus in the Section, "all metals not herein otherwise "provided for and all manufactures of metals, excepting, "&c.," and again "all leather not herein otherwise provided for, and all manufactures of skins, &c., except gloves and mittens;" and in Section 4 "on all bags, "cotton bags and bagging and all other like manufac- "tures not herein otherwise provided for, except, &c."

If the structure of our sentence be the same, and it would be unreasonable to suppose otherwise, then the words "not herein specifically provided for" refer to "books and other printed matter," or more precisely to that branch of the sentence which enumerates articles for reduction of duty, and the exception only covers "unsized printing paper."

Some books *are* provided for in the act (17 Stats., 234), and "not herein specifically provided for" may hence apply to "books" as well as to "paper."

Defendant's view requires that the phrase "not herein "specifically provided for" should qualify "paper and manufactures of paper" only, in which case it would not only be out of place, but the structure of the sentence would be different from that of all similar ones in the Act, for, had the draftsman so intended, he would have written, as he invariably has in like sentences, "all paper and manufactures of paper not herein specifically

provided for, except unsized printing paper, books and other printed matter," which he has not done.

Our construction was the one in force during the whole life of the original Act, as appears from Point VI. of this brief.

V.

The reduction of duty on books accords with past legislative action.

Books have long paid a lower duty than paper. Under the tariffs of

1846, Books paid 10 per cent.	Paper and manufactures of, 30 per cent.
1861, Books paid 15 per cent.	Paper and manufactures of, 30 per cent.
1862, Books paid 20 per cent.	Paper and manufactures of, 35 per cent.
1864, Books paid 25 per cent.	Paper and manufactures of, 35 per cent.

The copyright laws protect our publishers, and the low duty on books favors the diffusion of knowledge.

Under the Act in question, many classes of books were exempted from duty, and the paper used in making books was reduced from 35 per cent. to 25 per cent.

> Act June 6, 1872, sec. 4, 5; 17 Stats., pp. 233, 234.

Consequently, it will be difficult to show that Congress did not intend to reduce the duty *on all other books*, especially when the language used, construed according to legislative usage and policy, and grammatical structure, so declares.

VI.

Under the Act of 1872, the question at issue arose, and the Secretary of the Treasury decided on appeal, that "Books and other printed matter, not otherwise pro-"vided for in the Act of June 6, 1872, were entitled to "the reduction of the ten per cent. duty under the pro-"vision for such articles in the second section of that "Act."

Treasury decisions of 1872, page 266, § 1197.

And again: "Lithographic prints are entitled to a reduction of ten percentum duty, under the provisions of the second section of the Act of June 6, 1872, for books and other printed matter not herein specifically provided for."

Treasury decisions of 1872, page 270, § 1211.
This accords with Arthur v. Moller, 97 U. S., 368.

This construction prevailed during the whole time the Act of 1872 was in force, and until the exaction in this case.

The Treasury decisions are published for "information and guidance" of officers of the Customs, and through them of importers and the public; unreversed, they have the effect of law. (Rev. Stats., sec. 2931. The language of the law on "books and other printed matter" is not changed by the Revision, and this construction of an ambiguous law in force during its whole life, should control.

U. S. v. The Recorder, 1 Blatch., 218.
Stuart v. Laird, 1 Cranch, 299.
Edwards' Lessee, v. Darby, 12 Wheaton, 206.
Stairs v. Peaslee, 18 How., 526.
2 Opinions Att'y Gen'l, 558; 10 Idem, 52.
Sedgwick on Stat. and Const. Law, 251.

And for special reasons. Goods were contracted for and sold on this authorized interpretation of the law, and the statute, practically unchanged, should receive the same construction as the original Act, and not one subjecting the public to unavoidable loss.

The opinion of the revisers on the question is on record. In the original draft of the Revised Statutes by the Commissioners, the 2d section of the Act of June 6, 1872, was omitted, and in a note (on page 1173, Vol. 1) they say: "By the Act of June 6, 1872, a reduc-"tion was made of ten per cent. in the duties on certain "specified articles. This reduction has in this title "been computed and the amount placed in italics, the "original duty being enclosed in brackets."

The Tariff Schedules follow, and in Schedule M books are named at a duty of $22\frac{5}{10}$ per cent., which is 10 per cent. reduction on the primary duty of 25 per cent.

VII.

The highest duty is never imposed on a citizen in case of serious ambiguity in the language of an Act, or doubtful classification of articles, or vague or doubtful interpretation, and in all such cases the construction must be in favor of the importer.

Powers v. Barney, 5 Blatch., 202.
Adams v. Bancroft, 3 Sumner, 387.
U. S. v. Wiggleworth, 2 Story, 369.
U. S. v. Morse, 2 Ibid., 87.
U. S. v. Ullman, 4 Benedict, 553.
Phila. & Reading RR. v. Kenney, 18 Int. Rev. Rec., 92.

"If there be a doubt as to the liability of an instru-
"ment to taxation, the construction is in favor of the
"exemption, because, in the language of Pollock, C. B.,
"in Girr v. Scudds, 'a tax cannot be imposed without
"clear and express words for that purpose.' These
"principles are based on good sense, and are sustained
"by the authorities."

U. S. v. Isham, 17 Wallace, 504.

The judgment of the court below should be reversed.

EDWARD HARTLEY,
WALTER H. COLEMAN,

Of Counsel for Plaintiffs in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1881.

POTT
vs.
ARTHUR, COLLECTOR. } No. 183.

BRIEF FOR THE UNITED STATES.

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POTT
vs.
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BRIEF FOR THE UNITED STATES.

This was an action to recover duties exacted upon an importation of books in August, 1874.

The question is whether these were dutiable at 25 per cent., or were entitled to an abatement of 10 per cent. of such duty, under section 2503 of the Revised Statutes.

The facts agreed on are upon page 8 of the Record.

The statutory provisions applicable, in force in August, 1874, are as follows:

> Books, periodicals, pamphlets, blank-books, bound or unbound, and all printed matter, engravings, bound or unbound, illustrated books and papers, and maps and charts, twenty-five per centum ad valorem (Rev. Stat., sec. 2504, Schedule M, p. 474, top.)
>
> On the goods, wares, and merchandise in this section enumerated and provided for, imported from foreign countries, there shall be levied, collected, and paid only ninety per centum of the several duties and rates of duty imposed by the said schedules upon said articles severally, that is to say:
>
> * * * * * * *

On all paper, and manufactures of paper, excepting unsized printing paper, books, and other printed matter, and excepting sized or glued paper suitable only for printing-paper. (Sec. 2503, p. 459, middle *and* bottom.)

So much of this latter provision as was contained in the original act (that of 1872, ch. 315), is that which is italicised. The other words were added, as it seems, when the statutes were *revised*.

It seems, then, that the tax upon *books* was excepted from the *abatement:* because,—

1. The two first words of the above unitalicised clause in section 2503 ["and excepting"], seem sufficiently explained upon reasons that may be called *mechanical*, i. e., the circumstance that this clause was an *amendment* to the other provision, and was separated from so much of the exception as included *the other sort of printing paper*. An *appendage* of that sort, in place of an *ingrafting* upon the appropriate clause, is a matter not unusual in legislation. The above words are employed, not because they begin a new exception, but because they introduce a new sort of *printing paper* into the exception, after the enumeration had interposed other excepted articles betwixt *it* and other sorts of that paper.

2. The theory of the learned counsel for the plaintiff in error requires that the former part of the exception, as limited by them, should have been inserted immediately after the first enumeration in the paragraph, i. e., "all paper," for the exception so limited does not specify a *manufacture of paper* within the meaning of the statute, but only a *paper*, for under Schedule M, section 2504 (p. 479), *sized* [and therefore a fortiori *unsized*] *paper* is *paper* and not a *manufacture of paper*. But if the first clause of the *body* of the paragraph, as distin-

guished from the *exception*, be, "all paper and manufactures of paper," as by inspection it is, then the exception may itself well include *paper* (viz: unsized printing paper) and *manufactures thereof*, including in the latter term, expressly, ex abundanti cautela, *books*, &c. No good reason can be given, as it seems, for placing the exception just after *manufactures*, &c., instead of after *paper*, unless it be that the legislature intended to enumerate articles in the latter which were in some sense *manufactures*, &c.

3. The expression "manufactures of paper" does not occur in general legislation upon duties, but only "manufactures of paper *not otherwise provided for*," or the like (see brief for the plaintiff, pp. 3 and 4). Although *books* may not in ordinary language be spoken of as *manufactures of paper*, yet it is conceivable that a policy of imposing duties upon manufactures of paper, whether for revenue or protection, might extend to *books*. In such case, if not otherwise mentioned, books would be regarded as manufactured paper, and lines of Milton or oracles of Marshall inscribed therein would be of no concern. In case of a composite manufacture it depends upon the point of view, whether this or that element is the principal or merely an incident. So that in section 2503, which is compactly expressed, it may not have been superfluous expressly to exclude *books* from a provision operating upon a term, which, as we have seen, is unusual in such statutes, i. e., "manufactures of paper"—*unqualified*.

4. It is observable that for *books* in section 2503 to be included within the exception, i. e., to be excluded from the *decrease* of taxation upon manufactures of paper thereby provided, is in accordance with the uniform course of legislation in this respect, set forth in the

plaintiff's brief (pp. 4 and 5), where it will be seen that since 1846 *books* have uniformly advanced upon the rate at which *manufactures of pa er not otherwise provided for* have been taxed:

In 1846 the ratio of *books* to such *manufactures of paper* was in this respect *as* $\frac{1}{3}$ *is to* 1.

In 1861, *as* $\frac{1}{2}$ *is to* 1.

In 1862, *as* $\frac{4}{7}$ *is to* 1.

In 1864, *as* $\frac{5}{7}$ *is to* 1.

It was therefore according to the previous stages that in 1872, by excepting *books* from the decrease of taxation therein provided upon *manufactures of paper*, the ratio above mentioned was again advanced to, *as* $\frac{4}{5}$ *is to* 1.

This consideration does not turn upon minutiæ or refinements, but upon a clear uninterrupted *policy* apparent upon the face of a numerous series of statutes, extending through war and peace, over twenty-five years.

5. *Punctuation* is of value for interpretation where otherwise the matter *hangs in doubt*, which seems the most that can be said for the theory of the plaintiffs. This is admitted to favor the theory of the government, and so does the grammatical construction, a resort to the machinery of a parenthesis or hiatus being inadmissible except for cause shown. It is not enough to show that a parenthesis *might* operate, and what its results would be.

6. Lastly, it lies upon the plaintiff to show error in the decision below, *fortified* (as this must here be regarded to be) by the *practice* of the officers whose duty it has been to administer the statute. There is no presumption against revenue acts, and if the interpretation below be only shown to be *doubtful* it will stand.

S. F. PHILLIPS,
Solicitor General.